Govt. H.27—86,006—30-10-38.

Home (1938) Department

No. SERIES.

G.O. No. 17

DATED 3-1-1939

[Despatch Abstract.]

Public Services - Madras Judicial Subordinate Services - Executive and Clerk, District Munsif's Court, [illegible] - Exemption from educational qualifications Granted.

C.F.30.

DEPARTMENT.

Received ... 192 . Registered ... 192

-2 JUN 1938

Subject.

Home 22443 E
8.738

Public no.

Enclosures.
No ...
Spare copies ...

R.O.C. No. 5737/37 B-4.

Station Madras, , *Dated the* 29th June 1938. 192

From (Name) B.C. Sankara Narayana Esq., M.A. LL.B., (Bar-at-Law),
(Designation) Deputy Registrar, Appellate Side, High Court, Madras.

To The Secretary to the Government of Madras,

HOME Department.
(with enclosures)

Sir,

Public Services - Ministerial appointments in the Judicial Department - K.S. Mohamed, Clerk, District Munsif's Court, Udipi - Exemption under G.O. No.808 Public (Services) dated 29-4-1936 - Refused by the Services Commission - Memorial to Government.

I am directed to forward a memorial from K.S. Mohamed, Clerk, District Munsif's Court, Udipi, praying for exemption from educational qualifications prescribed for a clerk's post in the judicial department.

The

2 The memorialist was selected by the Services Commission as a candidate for ministerial posts in South Kanara on the results of the competitive examination held in September 1934 as he was then duly qualified having obtained a completed S.S.L.C. issued under the old scheme with History of England and India and typewriting as his optional subjects under group C (Vide clause (a) (2) of Schedule II to G.O. No.947 Public (Services) dated 10-9-1934).

3 Before he was allotted by the Collector to any department he was appointed as acting clerk for the first time in the Judicial Department from 5-1-1935 to 17-1-1935. He was afterwards entertained as clerk in the Bench Magistrate's Court, Mangalore, from 15-2-1935 to 6-3-1935 and in the office of the District Superintendent of Police, from 3-5-1935 to 2-6-35. Lastly he was appointed as acting clerk in the District Munsif's Court, Udipi, from 22-7-1935 onwards and he is still continuing there having been confirmed in that post on 1-4-1937. In November 1935, his name was deleted by the Services Commission from the approved list for failure to join an appointment offered to him in his turn by the District Collector.

4 As he was, however, appointed in the judicial Department prior to 10-7-1935 he applied for exemption from having to sit for the examination, in pursuance of G.O. No.808 Public (Services) dated 29-4-1936 and the Services Commission refused to grant him the exemption on the ground that he did not possess the required qualifications (a completed S.S.L.C. under the old scheme in which typewriting and shorthand together form a single C group subject) prescribed in G.O. No.10 Public (Services) dated 3-1-1935 amending the original G.O. with effect from 1-10-1934.

The District Judge considers that the memorialist's case is one of individual hardship and recommends (copy of his letter enclosed) as a special case his exemption in respect of qualification not possessed by him. I am directed to state that the

Hon'ble the Judges strongly support the District Judge's recommendation. The applicant was fully qualified under the rules in force up to 3-1-1955. He was appointed to act as clerk in the Judicial Department on 5-1-1955. But the rules had been slightly altered on 3-1-1955 by G.O. No.10 Public (Services). The alteration was that Typewriting and Shorthand combined were made an "optional" subject instead of Typewriting alone. The petitioner had taken Typewriting as an optional subject before the alteration of the rule.

I have the honour to be,

Sir,

Your most obedient Servant,

B. C. Sankara Narayana

Deputy Registrar, A.S.

PR/

4

Dis. 6/69

Copy of letter dated 23rd November 1937 from the District Judge, South Kanara, to the Registrar, High Court, Madras.

In forwarding herewith the memorial of K.S. Mahomed, Clerk, District Munsif's Court, Udipi, I wish to state as follows:-

K.S. Mahomed's name appeared as one of the candidates selected by the Madras Public Services Commission eligible for appointment in Government service in the gazette dated 25-2-1935 Taking this to be sufficient indication that K.S. Mahomed was a duly qualified candidate possessing the necessary minimum qualification, he was entertained as a clerk in the Sub Court for a short period of 13 days from 5-1-1935 to 17-1-1935, then for 16 days in the District Munsif's Court, Mangalore from 28-1-1935 to 12-2-1935 and in the Sub Court from 11-3-1935 to 18-4-1935. Presumably for the same reason he was entertained as a clerk in the Bench Magistrates' Court, Mangalore from 15-2-1935 to 6-3-1935 and in the office of the District Superintendent of Police from 3-5-1935 to 2-6-1935. Lastly he was appointed as a clerk in the District Munsif's Court, Udipi from 22-7-1935 onwards and he is still continuing in the said post, he having been confirmed on 1-4-1937 after he satisfactorily completed his probationary period of two years. At the time of his first appointment typewriting test was a necessary qualification for entertainment as a clerk in Government service. Persons with this qualification were very few indeed, and K.S. Mahomed possessing this qualification was naturally preferred. When he was appointed as a clerk on the last occasion in the District Munsif's Court, Udipi, viz., on 22-7-1935 his name was in the list of candidates selected by the Public Services Commission as eligible for appointment in Government service as notified in the gazette mentioned above, and the District Munsif took this as proof positive that he possessed not only

the necessary minimum general education qualification but was also in every way competent and eligible for Government appointment, specially when his qualifications had been scrutinised by an expert department like the Public Services Commission. His work in the Judicial Department was found satisfactory, and after completing his probation, he was confirmed as a clerk on 1-4-1937. Sometime before his confirmation, the clerk as a measure of abundant precaution acting on G.O. 808 Public Services, dated 29-4-1936 applied to the Public Services Commission for exemption. As his name appeared as one of the candidates selected by the Public Services Commission and notified in the Gazette, it was considered immaterial whether he got the exemption or not, and so he was confirmed as a clerk in the usual course. So far as I am able to see from the said G.O. 808 Public Services there is no objection for such confirmation at all. After his confirmation the reply of the Public Services Commission (copy enclosed) was received refusing to grant him the exemption prayed for. This put me on an enquiry to see if his appointment was not proper, and so I wrote a letter to the Public Services Commission whose copy I am enclosing. Their reply is also enclosed. Fearing that he will be ousted from his post on the basis of this last letter of the Public Services Commission, the clerk has memorialised the Government. I have once again gone into the whole matter very fully and feel satisfied that his appointment and confirmation are quite in order. The Public Services Commission do not say in so many words that his appointment and confirmation were wrong. The argument of the Public Services Commission is very unconvincing. If K.S. Mahomed had been appointed in any department of the Government other than the Judicial Department on the date he was last appointed in the Udipi

District Munsif's Court, no one including the Public Services Commission could have said that his appointment was not proper, because his name was notified by the Public Services Commission in the Gazette as an eligible candidate, and if he had continued in that department he would have been confirmed in the usual course after completion of the period of probation without demur, and no question would have arisen of his name being removed from the list at all on which the Public Services Commission seem to lay all the stress. Such being the case, this clerk ought not to be penalised because he joined the Judicial Department instead of any other department of Government. Such discrimination would hardly be fair to the Judicial Department or to the candidate himself, especially if the resulting penalty is to oust him from his office - altogether after he has been confirmed, on the ground that he is not a qualified man. A perusal of my letter to the Public Services Commission dated 13-10-1937 will show fully how I consider K.S. Mahomed to be a qualified candidate for appointment and confirmation. It will be extremely hard ~~on~~ on this clerk if he is ousted from service now, especially when the Public Services Commission by inclusion of his name in the gazette held out hopes to him that he was eligible for appointment in Government but for which he would have sought employment elsewhere. There ought to be some finality in this matter. It will not do for Government department to say at one time that a man is eligible and can be appointed, and at another time to say that he is not, especially when other offices who have a great regard for such opinion, acting on their declaration have appointed the candidate and confirmed him. In these circumstances, I would request the High Court to hold that both his appointment and confirmation are in order. If the High Court's decision is favourable to the petitioner, it would be quite unnecessary to forward the memorial to Government. But if for any reason the High Court comes to a different

conclusion I would request that the memorial may be forwarded to Government with a strong recommendation that this clerk may be exempted as a special case from the new rules regarding general educational qualifications, and declared as eligible for the appointment he holds.

Copy of letter No.599-c/27 dated the 7th September 1937 from the officiating Secretary, Public Services Commission, Madras, to the District Judge, South Kanara, Mangalore.

Appointment - Clerk - Judicial Department - confirmation - K.S. Mahomed - Your endorsement Dis. No.2210 dated 20-4-1937.

In his letter forwarded with your endorsement quoted the District Munsif, Udipi reported that K.S. Mahomed has been confirmed as clerk in his court with effect from 1-4-1937 in accordance with the District Court's order No.2080, dated 3-4-1937. This candidate applied for exemption under the terms of G.O. No.808, Public (Services) dated 29-4-1936 and his application was forwarded to the Commission with your letter Dis. No.6570 dated 20-11-1936. One of the conditions of exemption prescribed in the G.O. is that the applicant should be duly qualified at the time of his appointment or exempted by a competent authority in respect of any qualification not possessed by him. K.S. Mahomed was first appointed as clerk in the Judicial Department on 5-1-1935. According to the rules as they then stood he did not possess the minimum general educational qualification. As he had offered typewriting only as an optional subject under Group 'C' he could not be considered as having completed his S.S.L.C. under the old scheme in which Shorthand and Typewriting together formed a

single 'C' group subject and as he had offered only three instead of five subjects under group 'A' he could not be considered as having completed the certificate under the revised scheme; nor was there anything in the application to show that he was duly exempted by a competent authority from the possession of the prescribed educational qualification. In the circumstances his application for exemption was not admitted and his name included in the list of exempted persons forwarded with this office Letter No.1352-C/37 dated 2-9-1937.

2. The S.S.L.C. book and the Lower Grade Government Technical Examination Certificate in typewriting of K.S. Mahomed sent with his application for exemption are returned herewith for transmission to him.

Copy of letter Dis. No.5869/13-10-1937 from the District Judge of South Kanara to the Secretary, Public Services Commission, Madras.

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Appointment - clerk - judicial department - confirmation of K.S. Mahomed - Reference - Your letter No.5993/37 dated the 7th September 1937.

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I am in receipt of your letter dated 7-9-1937 and have noted that you have refused exemption to K.S. Mahomed. But K.S. Mahomed, as you know has been confirmed he having satisfactorily undergone his probationary period in Government service. At present he has been in this department alone for more than two years and three months. I take it that you do not consider that he does not possess the necessary minimum qualification for entertainment in Government Service, and I am writing this to make this point clear. I had this matter examined incidentally, and I may tell you that this clerk came to be entertained in this department. The Subordinate Judge

and the District Munsif who entertained this clerk in service appear to have been guided in selecting him by your department's notification dated 25-2-1935. K.S. Mahomed applied to you to appear for the Public Services Commission examination that was held in September 1934. No candidate is generally allowed to appear for this examination unless he is found eligible for admission into Government service. He was allowed to sit for the examination by you. He came out successful and his name appeared in the notification dated 25-2-1935. This gazette notification states that the candidates mentioned in it are eligible for appointment in the Madras Ministerial Service. My department points out to me that you being experts in the matter would not have allowed this clerk's name to be entered in that list if he was ineligible by reason of his not possessing the minimum qualification. He appears to have been appointed not only in this department but also in other departments on the strength of the above mentioned gazette notification. My own view is that though he may not be entitled to claim an exemption he is eligible for entertainment in Government service and that his entertainment is correct. Apart from the fact that he has been declared by a department like yours eligible to be in service, this clerk has produced before me his school leaving certificate. He is undoubtedly a holder of the school leaving certificate. The question is whether he has passed in the necessary subjects and secured the necessary marks to make him eligible for appointment in Government service. He first appeared for the S.S.L.C. examination in 1931. As he did not then secure the requisite percentage in English (A group) and Commercial Practice (C group) he appeared again in 1933. Under G.O. No. M3.739 Law (Education) dated 4th May 1931 candidates who did not secure the

-to 10

necessary percentage of marks in the examination held under the old rules were permitted to appear and complete their certificates by again appearing for the examination held under the old rules. Taking ~~xdx~~ advantage of this G.O. this clerk appeared in 1933 in English and Typewriting under the old rules and secured the necessary percentage in not only the A Group subjects, namely, English, but also in Typewriting, he having already passed in the History of England and India. Persons passing in such subjects have been declared to be eligible to appear for the competitive examination held by you in September 1934 under the nofification dated 2-6-1934 Annexure II. So I think he was properly admitted to the examination and you having rightly declared him eligible to be entertained in Government service the Judicial Department has correctly appointed and confirmed him as clerk. I wanted to bring this matter to the notice of the Government in case I came to the conclusion that this clerk did not possess the necessary minimum education qualification and recommend him for exemption. But there is no need for doing so now as I think he possesses the necessary educational qualification unless you think otherwise.

Copy of letter No. Ex.Judl. R.A.143/36 dated the 4th November 1937 from the Secretary, Public Services Commission, Madras to the District Judge of South Kanara.

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Examination - Competitive - Ministerial posts in the judicial department - exemption - K.S. Mahomed - Your letter No. Dis.5860 dated 12-10-1937.

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with 8-10 above

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I am to state that K.S. Mahomed was qualified to sit for the competitive examination for appointment in the Madras

Ministerial Service held in 1934 as he satisfied the qualifications prescribed in the Commission's notification dated 2-6-1934. He was accordingly admitted to the examination and, on the results of it, was also selected for appointment as clerk in the Madras Ministerial Service in the South Kanara District. In November 1935, his name was deleted from the approved list for failure to join an appointment offered to him in his turn on the ground that he was then employed in the Judicial Department. His selection thus became null and void. Subsequently, the minimum general educational qualification prescribed in the General Rules for subordinate services was altered in G.O. No.10, Public (Services), dated 3-1-1935, prescribing a completed S.S.L.C. of the old scheme in which Shorthand and Typewriting together formed a single 'C' group subject. As a result of this alteration, K.S. Mahomed was not qualified for appointment (after 3-1-1935) to posts for which the minimum general educational qualification was prescribed as he had offered only Typewriting and not Typewriting and Shorthand as an optional subject in the S.S.L.C. examination. Thus he was not qualified ~~ix~~ when he was appointed as clerk in the Judicial Department on 5-1-1935. For the reasons stated in the Commission's letter No.599-C/37 dated 7-9-1937, his application for exemption under the terms of G.O. No.808 Public (Services), dated 29-4-1936, was not admitted.

PR/

C.F. 30.

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DEPARTMENT.

35814 E 27/10

Received 27 OCT 1938 192 Registered 192

HOME DEPARTMENT * ASSISTANT SECRETARY TO GOVERNMENT

Subject

Rec 1-22443-1

ENCLOSURES.

No

Spare copies

R.O.C. No. 5737/37-B-4

Station. Madras, Dated the 26th October 1938.

From (Name) B.C.SANKARA NARAYANA Esquire, M.A., LL.B. (Bar-at-Law)

(Designation) Deputy Registrar, Appellate Side, High Court, Madras.

To The Secretary to the Government of Madras,

Home Department.

Sir,

Subject.- Public Services - Ministerial appointments in the Judicial Department - K.S.Mohamed, Clerk, District Munsif's Court, Udipi - Exemption under G.O.No. 808 P(S) dated 29-4-36 - Memorial to Government.

Reference.- High Court's letter No.5737/37-B4 dated ~~296-38~~. 29-6-38.

I am to enquire when orders of Government may be expected on the above reference.

I have the honour to be

Sir,

Your most obedient servant,

B. C. Sankara Narayana

DEPUTY REGISTRAR. A.S.

K.C.K

46
29/10

13

HOME DEPT.

Letter.Ref.No. 36814 E-1 dated 29.10

To

The Hon. the C.J.

High Court, Madras.

Hon. Sir,

PUBLIC SERVICE - Madras Judicial Subordinate Service - K.S.Mohamed, Clerk, District Munsif's Court, Udipi - Exemption from educationa qualifications - Ref. Letter R.O.C No.5737-37-B-4 d. 26.10.38.

...

I am directed to say that the matter is under the consideration of the Government.

I have etc.

29/10

29/10

Note: The file was received from Public on 21.10.38, and will be submitted shortly.

Public (Services) Dept.

Sub:- Public Services - Ministerial posts in Judicial Dept. - Mohamed, K.S., clerk, District Munsiff's Court, Udipi - Minimum general educational qualification - Relaxation of rule.

From the High Court, R.O.C.No.5737/37-B.4, dated 29-6-1938, through Home Department.

The facts of the case referred to in the C.F. are briefly as follows:-

1/ K.S. Mohamed was selected by the M.P.S.C. for appointment to the Madras Ministerial Service as clerk in the South Kanara district on the results of the competitive examination held in September 1934 Before he was allotted by the Collector under rule 2(f) of the M.M.S. Rules he was appointed in the Judicial Department on 5-1-1935. He was confirmed as clerk in the District Munsiff's Court, Udipi, on 1st April 1937.

2/ Mr. Mohamed - as a measure of abundant precaution in the words of the District Judge - had before his confirmation applied to the Commission for exemption from competitive examination for - appointment to the Judicial Department under G.O.No. 808, Public (Ser), dated 29-4-1936. The confirmation was however ordered in the view that no exemption was required as the clerk was duly selected by the Commission for appointment as a clerk. But the Commission refused to grant the exemption on the ground that Mr. Mohamed did not possess the minimum general educational qualification according to the rules in force on the date of his first appointment in the Judicial Department, viz., 5-1-1935. The Commission's reasons for this view are as follows:-

Although

Although the candidate was qualified at the time of selection he was not allotted by the Collector to any office as required by the Ministerial Service Rules. When he was actually allotted he did not join the appointment as he had meanwhile accepted an appointment in the Judicial Department. As he failed to join the appointment offered by the Collector his name was deleted from the Commission's List in November 1935 and the selection made in 1934 became therefore void. His appointment in the Judicial Department should be taken to have been made not on the basis of his selection for the Ministerial Service by the Commission, but as an independant appointment. He should therefore satisfy the qualification rule at the time of appointment on 5-1-1935.

K on pp 10-11 of.

vide p 11 of

3/ The minimum general educational qualification prescribed prior to 3-1-1935 was a completed S.S.L.C. with marks as shown against the following subjects:-

× Date of amendment in Fo. 10 P.S 3.1.35

(V)

I group	English	35%
	A language	35%
	Elementary Mathematics	35%
C group	Two subjects in Group 'C' of which one may be type-writing.	35%

para a(2), on p 43 of (K)

On 3rd January 1935 the above was altered with retrospective effect from 1-10-1934 as follows:-

Fo. 10. P.S 3.1.35

(V)

I group	English	35%
	A language	35%
	Elementary Mathematics	35%
C group	Two subjects in Group 'C' of which one may be shorthand & typewriting.	35%

For list of subjects see Cost. & Statist. pp 32-33 of (B)

× (V)

The candidate did not satisfy the new rule as he had taken only typewriting for one of his 'C' Group subjects and not both shorthand and typewriting required by the new rule. The Commission therefore refused to exempt the candidate from the competitive examination applied for with reference to G.O.No. 808, Pub(Ser), dated 29-4-1936 as he did not satisfy

vide pp 7-8 of

(L)

one

one of the conditions of exemption laid down in the G.O., viz., that the candidate should have been qualified at the time of appointment or should have been exempted by competent authority.

4. The District Judge, South Kanara considers that the case is one of individual hardship. The High Court strongly supports his view and recommends exemption from the minimum general educational qualification For appointment to the Madras Ministerisal Service the educational qualification is applied only at the time of selection. The candidate satisfied the qualification at the time of selection by the Commission. Before he was allotted by the Collector he got an appointment in the Judicial Department. He was actuall allotted to a post in the Madras Ministerial Service during the currency of the approved list in which his name was included but his name had to be removed from that list in November 1935 for failure to join the appointment offered to him in accordance with the rules. Had he resigned from the Judicial department and joined the appointment offered to him the question of his minimum general educational qualification as a consequence of an amendment of the General rules would not have arisen. Though the posts of clerks in the Judicial department had been included in the Madras Ministerial Service those posts were not filled in in accordance with the rules for that service as the High Court had objected to certain provisions in the Madras Ministerial Service Rules which were issued without previous consultation with ~~the High Court~~ it. A separate set of rules was issued in respect of the Judicial Department in G.O.No.892, Pub(Ser), dated 26-5-1938 and the selection in accordance with those rules is being made only this year. The appointing authorities

in

in the just department were appointing to posts under their control persons on the Commission's list for the Madras Ministerial Service without consulting the allotting authorities and even appointed persons outside the list.

5. In view of the peculiar circumstances of this case, the rule regarding qualification may, I think, be relaxed in the clerk's case and he be retained in service. The man has already been confirmed under the erroneous impression that he was qualified at the time of his appointment. Further action may be taken by Home as the clerk belongs to the Madras Judicial Subordinate Service.

As on p 5 ante

Home

Pub(Ser) 20737/38

21/10

HOME DEPARTMENT
21 OCT 1938
SECRETARY TO GOVERNMENT

30096

21/10

G.O. 2609 E

HOME (E) DEPT.

A.S.

Please see the Public note on pp.1-4 ante. In the circumstances stated therein this Department may perhaps agree to the relaxation of the rules relating to the minimum general educational qualification in respect of K.S. Mohamad. If so the draft order submitted below is for approval.

2/1 For orders as to circulation.

RG 29.10.38

29/10

BM 31/10

S

The rule may be delayed to the execution without the aid of the Public Dept

27.10.38

HOME SECRETARIAT 23 DEC 1938 GOVT OF MADRAS

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M(E&P) 31/18/11

P.M. C.R 23.12.38